IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FOURTH DAY OF JUNE,

TWO THOUSAND AND FIVE.
PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 16390 of 2002

Between:

P.Ameer Khan s/o.Subhankhan,

Aged about 42 years,r/o.H.No.17/163,Padamata Veedhi,

Challapalli, Krishna District.

..... PETITIONER

AND

1.The Government of Andhra Pradesh rep. By

its Secretary, Department of Higher Education,

Secretariat, Hyderabad.

2.The Director of Collegiate Education, Government

of Andhra Pradesh,Nampally,Hyderabad.

3.The Secretary and Correspondent,

Hindu College, Machilipatnam,

Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly in the nature of Writ of Mandamus declaring the proceedings Rc.No.1034/Admn.VI-I/2002 dated 10-8-2002 of the 2nd respondent as arbitrary,illegal, and non application of mind and to issue a

consequential direction to the 2nd respondent to ratify the appointment of the petitioner as Record Assistant in the 3rd respondent college pursuant to his selection by the duly constituted Selection Committee forthwith.

Counsel for the Petitioner:MR.SUBBA RAO KORRAPATI

Counsel for the Respondent No.1 & 2: GP FOR HIGHER EDUCATION

Counsel for the Respondent No.3: MR.A.VEERA SWAMY

The Court made the following:

ORDER:

The writ petition is filed for issuance of writ of mandamus declaring the proceedings Rc.No.1034/Admn.VI-I/2002 dated 10-08-2002 of the 2nd respondent as arbitrary, illegal and non application of mind and to issue a consequential direction to the 2nd respondent to ratify the appointment of the petitioner as Record Assistant in the 3rd respondent college pursuant to his selection by the duly constituted Selection Committee .

The brief facts that are necessary for disposal of the present writ petition as follows:

The petitioner was initially appointed as Helper in 3rd respondent college on consolidated pay of Rs.800/- per month in the year 1993. When he came to know that there are 12 vacancies of Record Assistant in the 3rd respondent college, he requested them to consider his case for appointment as Record Assistant. But they said that unless his name is sponsored by the Employment Exchange, his case cannot be considered for appointment as Record Assistant. Then he filed W.P.No. 15049 of 1993. Pursuant to the directions dated 7-10-1993 in W.P.M.P. No.19115 of 1993, his case was considred by the 3rd respondent in the interview held on 23-3-1994 and selected him to the post of Record Assistant but later this court dismissed the writ petition. After dismissal of the writ petition, the 3rd respondent removed him from service. Then he made a representation/appeal dated 3-10-1998 which was forwarded to the 1st respondent for consideration on 9-10-1998 and in turn the 1st respondent forwarded to the 2nd respondent. As the 2nd respondent failed to consider his representation/appeal, he filed a writ petition No.19935 of 2001 which

was disposed of by order dated 25-09-2001 directing the 2nd respondent to consider his representation on merits. As per the orders of this Court, the 3rd respondent by his orders dated 6-3-2002 was pleased to appoint him as Record Assistant subject to approval of the 2nd respondent. But as per the proceedings of the 2nd respondent dated 10-08-2002, his claim was rejected as there was no direct recruitment to the post of Record Assistant. The said order is under challenge as illegal and arbitrary, hence, the present writ petition.

The respondents 1 and 2 filed counter affidavit admitting the appointment of the petitioner as Helper on adhoc basis. It is also admitted that the management requested the Employment Exchange to sponsor the names for Attenders/ Record Assistants. As the petitioner's name was not appeared in the list of employment exchange, he filed writ petition No.15049 of 1993 to consider his case for the post of Record Assistant. The respondents also admitted about giving of interim direction by this Court. In pursuance of the interim direction, the petitioner was interviewed but results were not announced. Then the writ petition was dismissed stating that the petitioner is not entitled for selection as his name has not been sponsored by the Employment Exchange. The respondent also admitted about filing of writ petition No.19935 of 2001 by the petitioner and also interim orders thereon. It is stated that there is no direct recruitment for the post of Record Assistant. Therefore, the representation of the petitioner has been considered and rejected as it was not feasible. The interview which was held on 23-3-1994 for filling the post of Record Assistant is not valid as there was no provision for the post of Record Assistant. Hence, they prayed to dismiss the writ petition.

The 3rd respondent filed counter affidavit stating that the 3rd respondent college is aided educational institution having been admitted to the grant-in-aid. It is also admitted that the petitioner was working as Helper. He also admitted about filing of the writ petition by the writ petitioner. It is stated that the petitioner has given an undertaking on 2-7-1997 that in case his appointment is not approved by the Commissioner, Collegiate Education, he will not claim salary. The writ petition was dismissed as not pressed. Pursuant to the direction of this Court, the petitioner was appointed as Record Assistant subject to approval by the Government authority. The 2nd respondent who is competent authority, after considering the case of the petitioner, rejected the case for appointment as Record Assistant. Therefore, the

orders passed by the 2nd respondent are legal and valid. Therefore, the 3rd respondent prayed to dismiss the writ petition.

The learned counsel for the petitioner contended that the persons who were appointed in pursuance of the Selection Committee are being continued as Record Assistants. Now the respondents cannot turn round and say that the post of Record Assistant cannot be filled by direct recruitment. Therefore, it is totally non-application of mind in passing the impugned order and hence requested to set-aside the same.

On the other hand, the learned Government Pleader for Respondents 1 and 2 contended that there is no direct recruitment for filling the post of Record Assistant and the petitioner's selection has not been finalized in pursuance of the Selection held on 23-3-1994. When the petitioner was not entitled for selection and his name was not sponsored by the Employment Exchange, there was no proper selection of the petitioner and therefore, the question of consideration of the petitioner's name for appointment does not arise and the respondents 1 and 2 rightly rejected the same and therefore, there are no grounds to interfere with the impugned proceedings.

The counsel for the 3rd respondent contended that the petitioner was appointed as Helper to assist the management. There was no regular selection of the petitioner as Record Assistant. When the petitioner was not subjected to any regular selection process, the question of appointing him as Record Assistant does not arise and therefore, requested to dismiss the writ petition.

It is not in dispute that the 3rd respondent notified 12 vacancies of Record Assistant. The names sponsored by the Employment Exchange were considered for appointment. As the petitioner's name was not sponsored, he filed Writ Petition No. 15049/1993, where under this Court passed interim order dated 7-10-1993 in W.P.M.P.No.19115 of 1993 directing the 3rd respondent to consider the case of the petitioner in the interview to be held on 23-3-1994. Though the petitioner was permitted to participate in the interview in pursuance of the minutes of meeting of the Managing Committee held on 23-3-1994, the selection of the petitioner is kept under abeyance till orders of the High Court of A..P.The main writ petition No.15049 of 1993 was dismissed by this Court on 22-11-1995 holding that the petitioner is not entitled for selection as his name was not sponsored by the Employment Exchange. Therefore, the claim of the petitioner that he was selected to the post of Record Assistant has become nonest in the eye of law in view of the categorical finding

given by this Court in writ petition No.15049 of 1993 which order has become final. Though the petitioner was selected but his result has not been declared by the Selection Committee pending further orders of this Court. As the writ petition was dismissed, the selection of the petitioner is nonest in the eye of law. Thereafter, the writ petition No.19935 of 2001 was filed to consider his case for appointment as Record Assistant. This Court, while disposing of W.P.No.19935 of 2001 has directed the 2nd respondent to consider his representation on merits and dispose of the same within three months. Thereupon, the 3rd respondent passed orders on 6-3-2002 appointing the petitioner as Record Assistant subject to the approval of the 2nd respondent. The proceedings of the 3rd respondent dated 6-3-2002 appointing the petitioner as Record Assistant does not indicate whatsoever reason as to how the petitioner was appointed as Record Assistant. After selection process, in pursuance of Selection Committee which met on 23-3-1994, the petitioner was not subjected to any other selection process for appointment of Record Assistant. Therefore, the appointment order dated 6-3-2002 issued by the 3rd respondent is clearly illegal order basing on which the petitioner cannot claim any right. The said proceeding was issued subject to approval by the 2nd respondent. The 2nd respondent considered the case by its impugned order dated 10-08-2002 and rejected his case narrating all the facts. Though, ultimately the 2nd respondent came to the conclusion that there is no direct recruitment for the post of Record Assistant as it is a promotion post and there was no vacant post available in the College, the representation of the petitioner is considered and rejected and it is not feasible for compliance. It has been specifically stated by the respondents that there is no direct recruitment for the post of Record Assistant, which is a promotion post. The claim of the petitioner that he was selected in pursuance of the Selection Committee, which met on 23-3-1994 shall stand cancelled in view of the orders of this court in W.P.No.15049 of 1993 where under it is held that the petitioner is not entitled for selection as his name was not sponsored by the Employment Exchange and that order has become final. The said fact has also been mentioned in the impugned proceedings. Therefore, as matters stood as on today, the petitioner was not selected for the post of Record Assistant under regular selection process. Therefore, the question of considering the representation for appointment as Record Assistant in the absence of any selection process, he cannot be given appointment. Therefore, the impugned proceedings do not suffer from any incurable infirmities so as to call for interference by this Court.

The appointment made by the 3rd respondent dated 6-3-2002 cannot be ratified by any authority in the absence of petitioner undergoing selection process. Since the 3rd respondent college is an aided college, it is bound to obtain prior permission from the competent authority in filling up of the posts. Further,in the presence of the departmental nominee selection process has to be made. The proceedings of the Secretary and Correspondent dated 6-3-2002 is totally silent with regard to obtaining prior sanction from the competent authority in filling up of the posts and that the petitioner under went the selection process or that he was selected as Record Assistant by duly constituted Selection Committee.

Therefore, the writ petition is totally devoid of merit and is liable to be dismissed.

The Writ petition is, accordingly, dismissed. The interim orders passed on 29-08-2002 in W.P.M.P.No.20560 of 2002 is vacated. In the circumstances, no costs.

K.C.BHANU,J

24 -06-2005

Stp

To

1.The Secretary, Government of Andhra Pradesh, Department of Higher Education,Secretariat, Hyderabad.

2.The Director of Collegiate Education, Government

of Andhra Pradesh,Nampally,Hyderabad.

3.The Secretary and Correspondent,

Hindu College, Machilipatnam,

Krishna District.

4.Two CCs to G.P. for Higher Education, High Court Buildings,Hyderabad.(OUT)

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